

ESTTA Tracking number: **ESTTA596021**

Filing date: **04/02/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Gibson Brands, Inc.
Granted to Date of previous extension	04/02/2014
Address	309 Plus Park Boulevard Nashville, TN 37217 UNITED STATES
Attorney information	Andrea E. Bates Bates & Bates, LLC 1890 Marietta Boulevard, NW Atlanta, GA 30318 UNITED STATES abates@bates-bates.com

Applicant Information

Application No	86006455	Publication date	12/03/2013
Opposition Filing Date	04/02/2014	Opposition Period Ends	04/02/2014
Applicant	Guitar Monkey Entertainment, Inc. 2300 Charlotte Ave., Suite 103 Nashville, TN 37203 TUNISIA		


Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Prerecorded DVDs featuring instructions for guitar playing; guitar amplifiers
Class 015. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Guitars, namely acoustic and electric guitars; guitar accessories, namely, guitar picks, straps, stands, tuners, hooks; guitar strings; guitar carrying cases
Class 016. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Printed certificates of authenticity; printed materials in the field of guitar playing, namely, sheet music, music books, song sheets, chord charts, books, magazines and manuals featuring the subjects of guitar playing, guitar instruction and education and general entertainment, educational books, text books and printed teaching materials featuring the subject of guitar playing, guitar instruction and education and general entertainment
Class 021. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cloth for polishing guitars

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	86118614	Application Date	11/14/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	The mark consists of a stylized eagle with wings spread open to the sides.		
Goods/Services	Class 015. First use: First Use: 1963/06/30 First Use In Commerce: 1963/12/31 Musical instruments		

Attachments	86118614#TMSN.jpeg(bytes) Opposition to BIRD Design Mark.pdf(84544 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ Andrea E. Bates
Name	Andrea E. Bates
Date	04/02/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GIBSON BRANDS, INC.,]	
]	
Opposer,]	
]	
]	
vs.]	Opposition No.
]	
]	_____
]	
GUITAR MONKEY]	
ENTERTAINMENT, INC.,]	
]	
Applicant.]	

OPPOSITION

GIBSON BRANDS, INC., a Delaware corporation having its principal place of business at 309 Plus Park Boulevard, Nashville, Tennessee 37217 (“Opposer”), believes that it would be damaged by the registration of the BIRD Design mark (“Applicant’s Alleged Mark”) for guitars, namely acoustic and electric guitars; guitar accessories, namely, guitar picks, straps, stands, tuners, hooks; guitar strings; guitar carrying cases in Class 15; for prerecorded DVDs featuring instructions for guitar playing; guitar

amplifiers in Class 9; for printed certificates of authenticity; printed materials in the field of guitar playing, namely, sheet music, music books, song sheets, chord charts, books, magazines and manuals featuring the subjects of guitar playing, guitar instruction and education and general entertainment, educational books, text books and printed teaching materials featuring the subject of guitar playing, guitar instruction and education and general entertainment in Class 16; and for cloth for polishing guitars in Class 21 (“Applicant’s Goods”), which mark is subject of application Serial number 86/006,455, filed on July 10, 2013, by Guitar Monkey Entertainment, Inc. a Tennessee Corporation (“Applicant”), and published on December 3, 2013, and, by and through its undersigned attorney and in accordance with Rules 2.101 through 2.104 of the Trademark Rules of Practice, hereby opposes the same.

The grounds for the Opposition are as follows:

1. By the application, Applicant seeks to register Applicant’s Alleged Mark as a mark for Applicant’s Goods. The Application is an intent-to-use application.
2. Opposer has used in interstate commerce and is and has been at all times pertinent hereto (including since prior to the filing date of the Application), the owner of all right, title and interest in and to the GIBSON BIRD Design mark for use on music instruments.
3. Opposer is the owner of the federal trademark application Serial Number 86/118,614 for the GIBSON BIRD Design mark in International Class 15, filed on November 14, 2013, and covering musical instruments.

4. Opposer has used its GIBSON BIRD Design mark for and in connection with Opposer's Goods in interstate commerce in and throughout the United States continuously and extensively since at least as early as 1963.

5. As a result of the widespread and extensive use, advertising and promotion by Opposer of Opposer's GIBSON BIRD Design mark on Opposer's Goods, Opposer's GIBSON BIRD Design mark serves to identify and distinguish Opposer's musical instruments from the goods, services and businesses of others. Furthermore, Opposer's GIBSON BIRD Design mark symbolizes the goodwill of Opposer's business, is well-known, and is of great value to Opposer in connection with the offering of Opposer's Goods.

6. As Opposer has used Opposer's GIBSON BIRD Design mark exclusively since 1963 and Applicant, upon information and belief, has just recently begun to use Applicant's Alleged Mark in commerce—despite being an intent-to-use application—, Opposer has priority of use or priority of rights in the United States over Applicant's Alleged Mark.

7. Upon information and belief, Applicant's Goods and Opposer's Goods are similar in types, are offered or may be offered through the same, substantially the same, and/or related channels of trade, to the same, substantially the same, and/or related classes of purchasers, and are or may be advertised, marketed and promoted through the same media channels.

8. Upon information and belief, Applicant's Alleged Mark, when used in connection with Applicant's Goods, so resembles Opposer's GIBSON BIRD Design mark as to be

likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's Goods, with respect to Opposer's sponsorship thereof or connection or affiliation therewith, and/or in other ways.

9. Opposer would be damaged by the registration of Applicant's Alleged Mark because such registration would constitute prima facie evidence of Applicant's exclusive right to use Applicant's Alleged Mark for and in connection with Applicant's Goods, which would be inconsistent with and detrimental to Opposer's prior and superior rights in and to Opposer's GIBSON BIRD Design mark.

10. Applicant's Alleged Mark falsely suggests a connection or affiliation with Opposer, and Applicant is therefore not entitled to registration of Applicant's Alleged Mark.

WHEREFORE, Opposer Gibson Brands, Inc. respectfully prays that the application of Guitar Monkey Entertainment, Inc., serial number 86/006,455, filed on July 10, 2013, for the registration of the BIRD Design mark in International Class 9, 15, 16, and 21 be *refused*, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Respectfully submitted, this 2nd day of April 2014.

Bates & Bates, LLC

/s/ Andrea E Bates

Andrea E. Bates, Esq.

1890 Marietta Boulevard

Atlanta, GA 30318

Attorneys for Opposer Gibson Brands, Inc.

CERTIFICATE OF SERVICE

This is to certify that, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, I have this day served the foregoing Opposition on the Applicant by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addresses to the attorney of record for the Applicant as follows:

C. Douglas McDonald Jr.
CARLTON FIELDS, PA
P.O. BOX 3239
Tampa, Florida 33601-3239

This 2nd day of April, 2014.

/s/ Andrea E Bates
Andrea E. Bates, Esq.